

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
GLOBECAST NORTH AMERICA)	FCC File Nos. 0000417447, 0000417438,
INCORPORATED)	0000417460, 0000417427, 0000417523,
)	0000417553, 0000417544, 0000417421,
For Renewal of License for Common Carrier)	0000417425, 0000352248, 0000417452,
Point-to-Point Microwave Stations WHA400,)	0000417514, 0000417441, 0000417500,
WHA401, WLB719, WLL970, WLM975,)	0000417433, 0000417436, 0000417541,
WLM976, WLN539, WLN540, WLN542,)	0000417435, and 0000417418
WLN924, WLT865, WLU771, WLV934,)	
WMJ273, WMJ274, WLM358, WLM377,)	
WLM848, and WLU828 in the Los Angeles,)	
California area)	

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 2002

Released: May 3, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address GlobeCast North America Inc.'s ("GlobeCast") request for waiver of Section 1.913(b) of the Commission's Rules, to allow GlobeCast to file the above-referenced microwave license renewal applications manually, rather than electronically.¹ Additionally, we address Howard M. Fine/TV Microwaves Company's ("Fine") petition to deny the renewal of certain of the microwave renewal applications.² For the reasons set forth below, we deny GlobeCast's application for waiver of Section 1.913(b) of the Commission's Rules as well as dismiss Fine's Petition.

II. BACKGROUND

2. GlobeCast asserts that on or about January 16, 2001, one of its representatives discussed the filing of its renewal applications for the above-referenced stations with an entity that GlobeCast identified as the Public Information Office of the Wireless Telecommunications Bureau ("WTB") of the Federal Communications Commission.³ GlobeCast claims that Commission staff advised that applications for renewal of non-common carrier microwave licenses could be filed manually.⁴ On January 31, 2001, GlobeCast manually filed its license renewal applications for the above-captioned common carrier point-

¹ Request of GlobeCast NorthAmerica Incorporated for Waiver of § 1.913(b) (filed Mar. 26, 2001) (Waiver Request).

² Petition to Deny Renewal of Certain Microwave Licenses of GlobeCast North America, Inc., filed by Howard M. Fine/TV Microwaves Company (filed July 16, 2001) (Fine Petition).

³ Waiver Request at 1. There is no such organization within the Bureau. It is unclear with whom GlobeCast spoke.

⁴ Waiver Request at 1.

to-point microwave stations.⁵ The licenses for the referenced stations were scheduled to expire on February 1, 2001.⁶

3. GlobeCast further asserts that on February 8, 2001, WTB staff advised GlobeCast that its application should have been filed electronically, but that the manual filing would be accepted.⁷ It further asserts that on March 15, 2001, it was informed by WTB staff that the application should have been filed electronically, and that it would have to seek a waiver of the electronic filing requirement.⁸ Accordingly, on March 26, 2001, GlobeCast requested a waiver of Section 1.913(b) to allow acceptance of its manually filed applications.⁹

4. Fine, the licensee of point-to-point microwave Stations WMW412 and WMW413, Los Angeles, California, is a direct competitor of GlobeCast.¹⁰ On July 16, 2001, Fine objected to the renewal of GlobeCast's facilities with call signs WHA400, WHA401, WLB719, WLL970, WLM358, WLM377, WLM848, WLM975, WLM976, WLN539, WLN540, WLN542, WLN824, WLN865, WLU771, WLU828, WLV934, and WMJ273 on the grounds that the facilities were not currently constructed, the frequencies were not in use, and the licenses were vacant.¹¹

5. GlobeCast filed a partial opposition to Fine's Petition on August 16, 2001.¹² In its Partial Opposition, GlobeCast submits that the Fine Petition is moot with regard to Stations WHA400, WHA401, WLB719, WLL970, WLM975, WLM976, WLN539, WLN540, WLN542, WLN924, WLT865, WLU771, WLV934, WMJ273, and WMJ274.¹³ GlobeCast asserted that these facilities were no longer necessary for its operations and requested cancellation of the authorizations.¹⁴ Finally, GlobeCast requested renewal and modification of the licenses for Stations WLM358, WLM377, WLM848, and renewal of Station WLU828.¹⁵

6. On September 17, 2001, pursuant to Section 308(b) of the Communications Act of 1934, the Policy and Rules Branch, Public Safety and Private Wireless Division, WTB directed GlobeCast to

⁵ *Id.* at 1-2.

⁶ Letter from David Sprechman, GlobeCast, to Wireless Applications Bureau, Federal Communications Commission, dated January 30, 2001.

⁷ Waiver Request at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ Fine Petition at 1.

¹¹ *Id.* at 2.

¹² Partial Opposition to Petition to Deny (filed August 16, 2001) (Partial Opposition).

¹³ Partial Opposition at 2.

¹⁴ *Id.* at 1-3.

¹⁵ Partial Opposition at 2-3. With respect to Station WLM848, GlobeCast requests deletion of all locations except location one and location eight from the license and retention of only path number four employing the frequency 21.675 GHz. *Id.* at 2. GlobeCast requests the renewal of Station WLM848 with these changes. *Id.* Regarding Station WLM358, GlobeCast believes that the frequencies 21.725 GHz and 21.775 GHz are no longer necessary for the station's operations, and asks that we delete these frequencies from the station's renewed license. *Id.* In the case of Station WLM377, GlobeCast notes that path number one and location number two are no longer necessary, and requests the deletion of path number one and location number two from the station's renewed license. *Id.*

provide certain information concerning its license renewal applications.¹⁶ Specifically, the Policy and Rules Branch asked that GlobeCast provide, among other things, 1) information as to when the facilities associated with the aforementioned stations were constructed; 2) the geographic coordinates for the sites where the stations were initially constructed and, if the stations had been relocated, the new coordinates; 3) the first and last dates on which the stations operated; 4) whether any of the stations were taken out of service for a period of a year or more and, if so, the date on which the system(s) were permanently taken out of service; and, 5) the frequencies on which the stations currently operate.¹⁷ On November 7, 2001, GlobeCast responded to the letter and provided the requested information.¹⁸

III. DISCUSSION

7. Prior to addressing GlobeCast's applications, we will address the Fine Petition. Section 1.939 of the Commission's Rules¹⁹ sets forth the requirements for petitions to deny. Section 1.939(a)(2) of the Commission's Rules states that for non-auctionable applications, petitions to deny must be filed within thirty days after the date of the public notice accepting the application for filing.²⁰ In this case, the public notice accepting the applications for filing was dated April 11, 2001.²¹ Thus, the deadline for filing petitions to deny regarding such applications was May 11, 2001. The Fine Petition was filed on July 16, 2001 and was therefore untimely. We therefore dismiss the Fine Petition as untimely.²²

8. With regard to GlobeCast's request for a waiver of Section 1.913(b) of the Commission's Rules,²³ we find that the request is premature. Currently, we have before us timely filed applications that were submitted manually instead of electronically.²⁴ These applicants were required to be filed electronically. Because they were instead filed manually, they are defective applications pursuant to Section 1.934(d) of the Commission's Rules.²⁵ Consequently, we must apply the Commission's policy regarding the processing of timely filed, but defective, license renewal applications. In 1998, the Commission established a unified policy for dismissing and returning applications, as well as pleadings related to such applications (Unified Policy).²⁶ On June 28, 1999, the Commission modified such policy,²⁷ and on July 1, 1999, the WTB began implementing the policy as modified.²⁸ The Unified Policy

¹⁶ Letter from John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, to David Sprechman, GlobeCast North America Incorporated, dated September 17, 2001 (Schauble Letter).

¹⁷ *Id.*

¹⁸ Letter from David Sprechman, Executive Vice President and Chief Operating Officer, GlobeCast, to John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (filed Nov. 7, 2001).

¹⁹ 47 C.F.R. § 1.939.

²⁰ 47 C.F.R. § 1.939(a)(2).

²¹ *Public Notice*, Rep. No. 824 (April 11, 2001).

²² *See* 47 C.F.R. § 1.939(g).

²³ 47 C.F.R. § 1.913(b).

²⁴ 47 C.F.R. § 1.913(b).

²⁵ 47 C.F.R. § 1.934(d).

²⁶ Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket 98-20, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*).

applies to Wireless Radio Services six months after the licensing information for that service is implemented in the Commission's Universal Licensing System (ULS).²⁹ In this case, licensing information for the point-to-point microwave service was implemented in the ULS on August 30, 1999.³⁰ As a result, the effective date of the unified policy being applied to the point-to-point microwave service was March 1, 2000. The Unified Policy, therefore, applied to GlobeCast's license renewal applications, which were filed on January 31, 2001.

9. Under the Unified Policy, applications or pleadings that are defective, as a general matter, are subject to dismissal, rather than being returned to the applicant for correction.³¹ As an exception, however, the Commission noted that it retained "the discretion to return an application if circumstances warrant."³² In the *Unified Policy Public Notice*, the WTB determined that it would return for correction, rather than dismiss, timely filed renewal applications and timely filed notifications of construction (*i.e.*, where dismissal could result in expiration or termination of a license).³³ The WTB decided to return (rather than dismiss) timely filed renewal applications and timely filed notifications of construction for two reasons.³⁴ First, renewals and construction notifications are simple filings where it is unlikely that applicants will make a large number of errors.³⁵ Second, the WTB noted that because dismissal will lead to expiration or termination of the license, the WTB would likely have to review Special Temporary Authority (STA) requests, waiver requests, and/or petitions for reconsideration filed by the applicant in an effort to continue operation and regain the license.³⁶

10. With respect to returns, the Commission previously has noted that "if the applicant fails

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²⁷ Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999) (*ULS Memorandum Opinion & Order*).

²⁸ Wireless Telecommunications Bureau Revises and Begins Phased Implementation of Its Unified Policy for Reviewing License Applications and Pleadings, *Public Notice*, 14 FCC Rcd 11182 (WTB 1999) (*Unified Policy Public Notice*).

²⁹ *Id.*, 14 FCC Rcd at 11191.

³⁰ Wireless Telecommunications Bureau to Begin Use of Universal Licensing System (ULS) for Microwave Services on August 30, 1999, *Public Notice*, 14 FCC Rcd 12393 (WTB 1999).

³¹ *ULS Report and Order*, 13 FCC Rcd at 21069 ¶ 92.

³² *Id.*

³³ *Unified Policy Public Notice*, 14 FCC Rcd at 11182. This return policy only affects timely filed renewal applications and timely filed notifications of construction on license applications. *Id.* at n.1. The return policy does not apply to notifications for antenna structures (FCC Forms 854 and 854R). *Id.* On December 26, 2001, the WTB further clarified further the return policy by stating that renewal applications and construction notifications that fail to comply with the applicable fee and signature requirements will be dismissed by the Bureau as defective, rather than returned to the applicants for correction, even if timely filed. Wireless Telecommunications Bureau Clarifies Unified Policy for Dismissing and Returning Applications, *Public Notice*, DA 01-3004, at 2-3 (WTB PSPWD rel. Dec. 26, 2001). This clarification is based on the Commission decision that it would automatically dismiss any application that was defective because the applicant failed to sign the application, failed to pay the required filing fee, or filed outside of the applicable filing window. *Id.* at 3 (citing *ULS Report and Order*, 13 FCC Rcd at 21068 ¶ 90). The Commission determined that such defects were fatal to the consideration of the application. *Id.*

³⁴ *Unified Policy Public Notice*, 14 FCC Rcd at 11186.

³⁵ *Id.*

³⁶ *Id.*

to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute.”³⁷ The WTB reiterated this notion in the *Unified Policy Public Notice* by stating that:

Returns will be done by letter and will clearly state that failure to respond within 60 days will result in dismissal of the subject application. If at the end of the 60-day period the Bureau is still unable to process the application (whether or not it has been amended), the Bureau may dismiss the application pursuant to Section 1.934(c) for failure to prosecute. As noted above, applications dismissed and later refiled will lose their original place in the processing line and be treated as newly-filed applications.³⁸

11. We conclude that a return of the license renewal applications to GlobeCast is the appropriate action in this instance. Section 1.913(b) requires that license renewal applications, such as the subject applications, should have been filed with the Commission electronically in accordance with the electronic filing instructions provided by ULS.³⁹ GlobeCast, by failing to file the subject license renewal applications electronically, filed defective applications. The Unified Policy requires the Commission to provide licensees that file timely but defective license renewal applications, an opportunity to correct the defective filings. Accordingly, we will direct the Division’s Licensing and Technical Analysis Branch to return the applications to GlobeCast to afford it sixty days to correct the deficiency.

IV. CONCLUSION AND ORDERING CLAUSES

12. For the reasons discussed above, we dismiss Fine’s petition to deny as untimely. Additionally, we dismiss GlobeCast’s request for a waiver of Section 1.913(b) and will return the microwave renewal applications to GlobeCast for correction.

13. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, the waiver request filed by GlobeCast North America, Inc. on March 26, 2001, IS DISMISSED.

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.939(g) of the Commission’s Rules, 47 C.F.R. § 1.939(g), the Petition to Deny filed by Howard M. Fine/TV Microwaves Company on July 19, 2001 IS DISMISSED.

15. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309, and Section 1.934(a)(1) of the Commission’s Rules, 47 C.F.R. § 1.934(a)(1), that Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau return the subject license renewal applications to GlobeCast to provide GlobeCast the opportunity to correct the deficiency in its filing of the applications.

³⁷ *ULS Report and Order*, 13 FCC Rcd at 21069-70 ¶ 93.

³⁸ *Unified Policy Public Notice*, 14 FCC Rcd at 11186-87.

³⁹ 47 C.F.R. § 1.913(b).

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau